OPR

THE OFFICE OF PROCUREMENT REGULATION

ACCOUNTABILITY | INTEGRITY | TRANSPARENCY | VALUE FOR MONEY

SENSITISATION SESSION FOR LAND SETTLEMENT AGENCY

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY LEGISLATION COMPLIANCE

AGENDA

I. Presentation Objectives
II. Insight into Public Procurement
III. Objectives/Principles & Benefits of Public Procurement
IV. Synopsis of the Public Procurement Legislation
V. Effects of the Public Procurement Legislation
VI. Organisational Structure
VII. Roles & Responsibilities of Key Players
VIII. Annual Procurement Plan (APP)
IX. Database of Suppliers/Contractors
X. Solicitation of Tenders
XI. Contract Management
XII. Typical Implementation Plan
XIII. References

OBJECTIVES

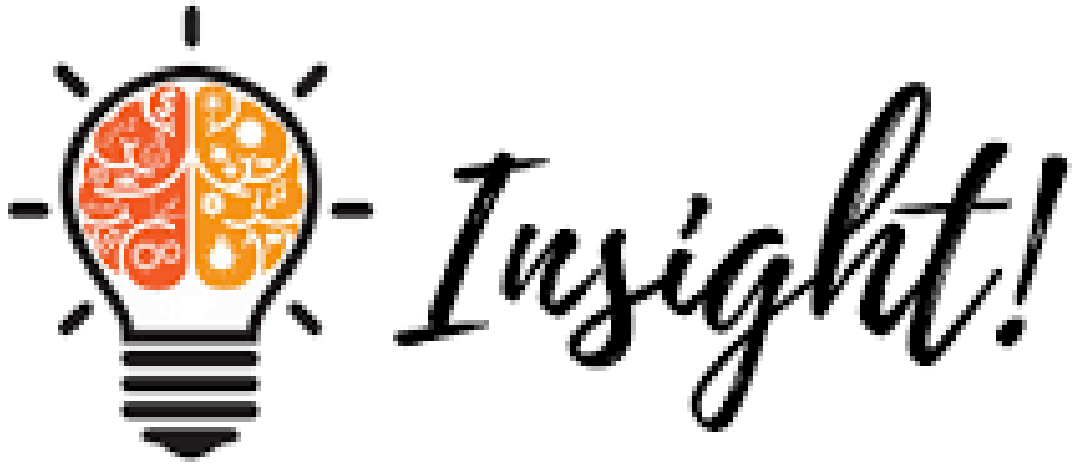
To sensitise the Land Settlement Agency about the Public Procurement and Disposal of Public Property Act, 2015 (as amended)

To inform of the benefits of compliance with the requirements of the Act, Regulations, Handbooks & Guidelines & penalties attached to non-compliance

To advocate the roles and responsibilities of key players within the LSA & outline the organisational structure of the procurement department in the execution of procurement activities

To inform LSA on the database of suppliers/contractors; the Annual Procurement Plan; Solicitation of Tenders & Managing of Contracts

INSIGHT INTO PUBLIC PROCUREMENT



ELEMENTS OF PROCUREMENT?

- Process of identifying what is needed;
- Determining who or what is the best supplier/contractor;
- Ensuring that what is needed is delivered to the right place, at the right time, in the right condition, for the right price; and
- Ensuring that all procurement processes have been performed in a fair, open and efficient manner in keeping with the objects of the Act.

PUBLIC PROCUREMENT

- According to the Act, Public Procurement is the acquisition of goods, works or services involving the use of public money.
- As defined in the Act there are 12 classes of public bodies ranging from the Office of the President, Parliament, the Judiciary, Ministries to the Tobago House of Assembly, Municipal Corporations, Regional Health Authorities, Statutory Bodies, State Controlled Enterprise, Service Commissions and **a Body Corporate or Unincorporated.**
- According to the World Trade Organisation, Government Procurement activities accounts for approximately 15% of the country's Gross Domestic Product (GDP).

OBJECTIVES/ PRINCIPLES & BENEFITS OF PUBLIC PROCUREMENT

OBJECTIVES/PRINCIPLES & BENEFITS OF PUBLIC PROCUREMENT

There is an inter-locking and commonality relationship between these concepts, the major ones being:

- Provision of value for money;
- Greater access to all eligible bidders;
- Collaboration & Integration;
- Transparency;
- Competition;
- Reduced scope for corruption;
- Accountability;
- Non-discriminatory specifications; and
- Fair bidding procedures and evaluations in accordance with pre-disclosed criteria.

SYNOPSIS OF THE PUBLIC PROCUREMENT LEGISLATION

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❖ REGULATORY FRAMEWORK

Brings all bodies spending Public Money under a single regulatory framework that covers all stages of the procurement process.

- Responsibility for oversight and control rests with the **OPR** which is headed by the **Procurement Regulator** and managed by a Board both appointed by the President – **Sections 10 & 14**
- The **OPR** shall issue guidelines, model Handbooks and standard bidding documents for use in public procurement and shall review special guidelines & handbooks for use by public bodies **– Section 13**
- The **OPR** shall establish a comprehensive database of information on public procurement and tenders received, award and values of contracts **– Section 13**
- The **OPR** shall set training standards, competence levels and certification requirements to promote best practice in procurement **– Section 13**
- The **OPR** shall prepare and maintain a Database of pre-qualified suppliers/contractors **– Section 13**
- The **OPR** shall establish the Procurement Depository to which suppliers/contractors can submit information with respect to qualifications and experience – **Section 26**

SYNOPSIS OF THE PUBLIC PROCUREMENT LEGISLATION

❖ COMPLIANCE AND ENFORCEMENT

- Any procuring of goods, works and services or retention or disposal of public property that is not done in accordance with the Act shall be void and illegal – **Section 6.**
- The **OPR** may conduct audits and periodic inspection of public bodies and issue directions to them – **Sections 13 & 14**
- The **OPR** has the power to investigate any alleged breaches of the **Act** and if of the view that an offence has been committed shall make a report to the **Director of Public Prosecutions Sections 41 – 48**
- The **OPR** must submit an Annual Report to the Parliament including the total number and value of contracts awarded by public bodies, the number of unfulfilled procurement contracts and those bodies that have failed to comply with the Act. – **Section 24.**

OFFENCES AND PENALTIES

Section	Offence	Specified Penalty
14 (2)	**Failure to comply** with a direction by the OPR issued under the Act to ensure compliance with the Act (public body or person)	$100,000
17 (2)	Failure of a member of the Board (OPR) or a Committee constituted by the Board (knowingly or willfully) **to disclose an interest**	$500,000 & 1 Year Imprisonment
31	Splitting of Procurement	$500,000 & 1 Year Imprisonment
39	Failure of procuring entity to comply with requirements with respect to confidentiality of information	$500,000 & 1 Year Imprisonment
40	Victimisation	$500,000 & 1 Year Imprisonment
41	Failure of a person to report instances of collusion	$500,000 & 1 Year Imprisonment
41 (4)	False report to the Office	$500,000 & 1 Year Imprisonment
46	Concealing or destroying information required for an investigation	$5Million and 10 Years Imprisonment
52	Failure to comply with requirements with respect to confidentiality in challenge proceedings	$500,000 & 1 Year Imprisonment

OFFENCES AND PENALTIES (CONT'D)

Section	Offence	Specified Penalty
59 (10)	Conduct influencing public officer (bribery, conflicts of interest, corrupt, fraudulent, collusive, coercive or obstructive practices)	$1Million & 5 Years Imprisonment
60 (1)	Bid-rigging, influencing procurement proceedings	$5Million and 10 Years Imprisonment
60 (2)	Altering a procurement document to influence the outcome of the procurement proceedings	$2Million and 7 Years Imprisonment
63 (2)	Contravention of a regulation made by the Minister on the recommendation of the OPR (challenge proceedings, ineligibility list)	Up to $1Million & 5 Years Imprisonment

EFFECTS OF THE PUBLIC PROCUREMENT LEGISLATION

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Act No. 1 of 2015, the Public Procurement and Disposal of Public Property Act 2015

- Provides for public procurement, the establishment of the Office of Procurement Regulation and the repeal of the Central Tenders Board Act.

Act No.5 of 2016

- Review Board to review decisions made by the Office of Procurement Regulation.

Section 64 of the Act

- Provides for the repealing of the CTB Act and the transference of the existing procurement proceedings to the purview of the OPR.
- Each public body will be obligated to establish its own Procurement Department with the Accounting Officer accountable for contracts regardless of size.

REQUIREMENTS OF THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY ACT, 2015, AS AMENDED ("THE ACT")

SECTIONS 13 (C), (D), (E); 30; 54

The Office of Procurement Regulation

Issues	• General Guidelines • Model Guidelines for Special Guidelines
Prepares, updates and issues	• Model Handbooks incorporating: i. Standardised bidding documents ii. Procedural forms (incl. contracts) iii. Relevant documents
Approves	• Special Guidelines and Handbooks

Land Settlement Agency

Prepares	• Exceptions / Amendments to the General Guidelines (Special Guidelines) • Handbooks
Submits	• Special Guidelines & Handbooks to the OPR for approval

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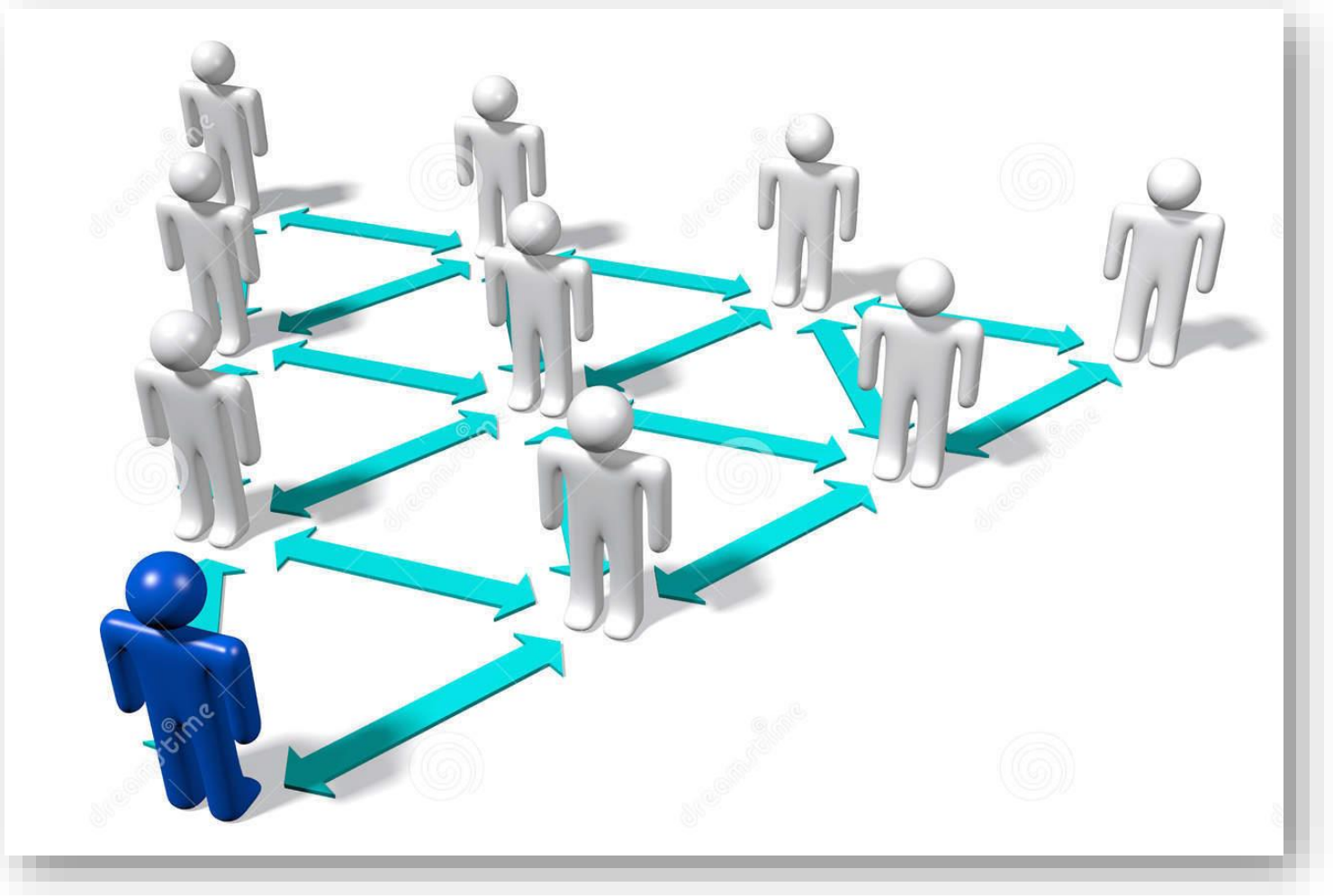
SUMMARY OF EFFECTS OF THE PUBLIC PROCUREMENT LEGISLATION

The new legislation shall reinforce the need to observe best practice in procurement, retention & disposal of public property while including monitoring and reporting responsibilities to all Accounting Officers

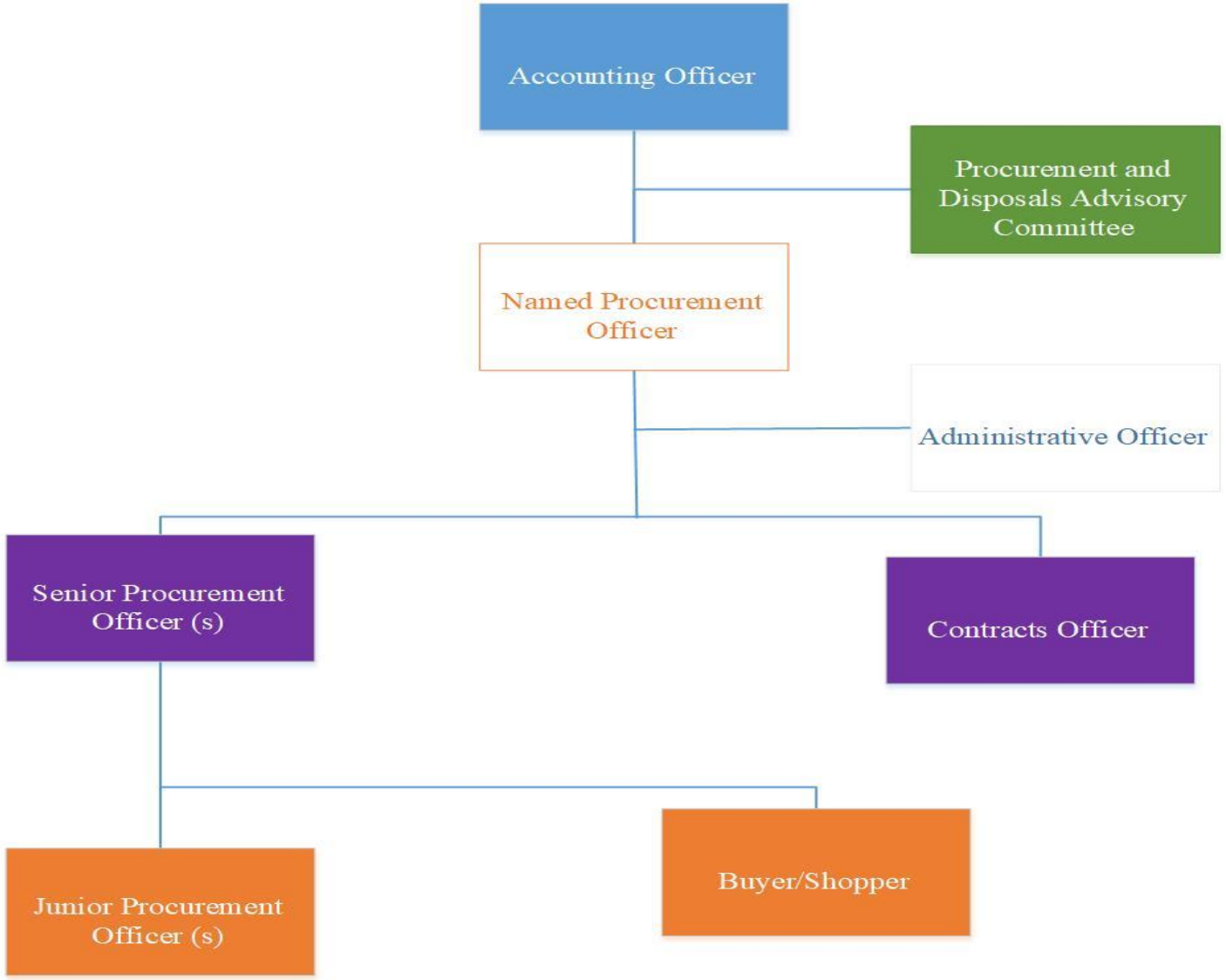
The procedures outlined in the Act, Regulations, Handbooks & Guidelines approved for the LSA will guide all practitioners in their procurement exercises

Public Bodies must have a Procurement Officer who shall be responsible for Public Procurement & Disposal of Public Property, the OPR shall be informed of same

ORGANISATIONAL STRUCTURE: PROCUREMENT DEPARTMENT



SAMPLE ORGANIZATIONAL STRUCTURE FOR A FULLY CONSTITUTED PROCUREMENT UNIT



ROLES AND RESPONSIBILITIES OF KEY PLAYERS

ROLES AND RESPONSIBILITIES OF ACCOUNTING OFFICER/CEO OR EQUIVALENT

The Financial Regulations of the Exchequer and Audit Act set out the accountabilities of Accounting Officers as follows:

Section (4). An accounting officer shall be responsible for ensuring— (a) that the financial business of the State for which he is responsible is properly conducted; and (b) that public funds entrusted to his care are properly safe-guarded and are applied only to the purposes intended by Parliament.

Section (5).All accounting officers are personally and pecuniarily responsible for— (a) the due performance of the financial duties of their departments; (b) the proper collection and custody of all public moneys receivable by them; and (c) for any accounts rendered by them or under their authority.

PROCUREMENT AND DISPOSAL ADVISORY COMMITTEE (PDAC)

The PDAC is appointed by the Accounting Officer & reviews the procurement records, the report & recommendations for contract award & determines whether the following three criteria have been met:

a) the approved processes as set out in the Handbooks and Guidelines were followed;

b) the approved procurement, retention & disposal strategy outlined in the Annual Procurement Plan was followed; and

c) value for money was achieved; and advises the Accounting Officer accordingly

Recommended composition of the PDAC: Corporate Secretary/Head of Legal, Head of Finance & Subject Matter Expert

Note: The PDAC may consult with the '**named**' procurement officer and/or the evaluation committee during its review of the proceedings.

‘NAMED’ PROCUREMENT OFFICER (NPO)

A public body shall have a procurement officer who shall be responsible for public procurement and the disposal of public property for that body and shall notify the Office, in writing, of the name and designation of its procurement officer – Section 61(2)

The NPO is responsible for:

- ensuring that training is provided to procurement staff in the code of conduct, annually;
- compiling the APP for approval by the Accounting Officer & submission to the OPR;
- compiling the annual procurement performance report within 1 month of the end of each fiscal period;
- customising the Handbook and Special Guidelines for approval by the OPR; and
- ensuring that the procurement, retention and disposal of public property functions are planned and executed in a manner designed to achieve the Objects of the Act

FINANCE MANAGER

Under the LSA:

- List of procured items categorised under the main three **groups** - goods/services/works.
- Determine expenditure (by groups & categories) for the past three (3) years – estimated versus actual spend (where available)
- Determine anticipated spend for the upcoming Fiscal Year – 2020/2021.

HUMAN RESOURCE DEPARTMENT

1

Develop a Code of Conduct (Ethical Procedures) – in conjunction with the relevant Departments

2

Finalise job descriptions for roles under the Procurement Department

3

Generate a list of staff likely to be involved in procurement function & hire externally to supplement where required

4

Develop a training plan for the Procurement Department

- Procurement Training and certification
- Training in ethics (all staff)

INFORMATION COMMUNICATIONS AND TECHNOLOGY (ICT)

1

Facilitate the implementation of a secure Records Management System for procurement

2

Develop a robust security system for access and storage of Procurement Documents

LEGAL

Be actively	involved in the review of the solicitation documents (including draft contract), the evaluation process, negotiation and finalisation of contracts to ensure necessary legal information is included.
Participate in	negotiations with Suppliers/Contractors
Review and finalise	the Code of Conduct
Sensitise	all staff on the Act in collaboration with the 'named' Procurement Officer

ALL INTERNAL DEPARTMENTS

Each department to prepare a list of all goods/services/works to be procured with corresponding cost estimates for the upcoming financial year.

Departments of LSA must forward all procurement requests to Procurement Department.

Cross-functional teams to develop & agree on procurement & disposal strategy

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DATABASE OF SUPPLIERS/ CONTRACTORS

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DATABASE OF SUPPLIERS/CONTRACTORS: REQUIREMENTS OF THE ACT

The Act requires that the OPR establish a database, known as "the Procurement Depository" where suppliers and contractors can provide information with respect to their qualifications and experience.

The Act requires that the OPR prepare and maintain a database of pre-qualified suppliers/contractors.

WHAT IS PRE-QUALIFICATION?

Pre-qualification is the procedure to **identify** prior to solicitation, suppliers/contractors who are **qualified**.

WHAT IS ASSESSED DURING A PRE-QUALIFICATION PROCESS

A procuring entity shall ensure that suppliers/contractors meet the minimum requirements in accordance with Section 29 (1) of the Act, that is that they:

a. Have the **legal capacity** to enter into the procurement contract

b. Are **not insolvent, in receivership, bankrupt or being wound up**, their **affairs are not being administered by a court or a judicial officer**, their **business activities have not been suspended** and they are **not the subject of legal proceedings** for any of the foregoing.

c. Have not, and their **directors or officers have not, been convicted of any criminal offence**

WHAT IS ASSESSED DURING A PRE-QUALIFICATION PROCESS (CONT'D)

A procuring entity shall ensure that suppliers/ contractors:

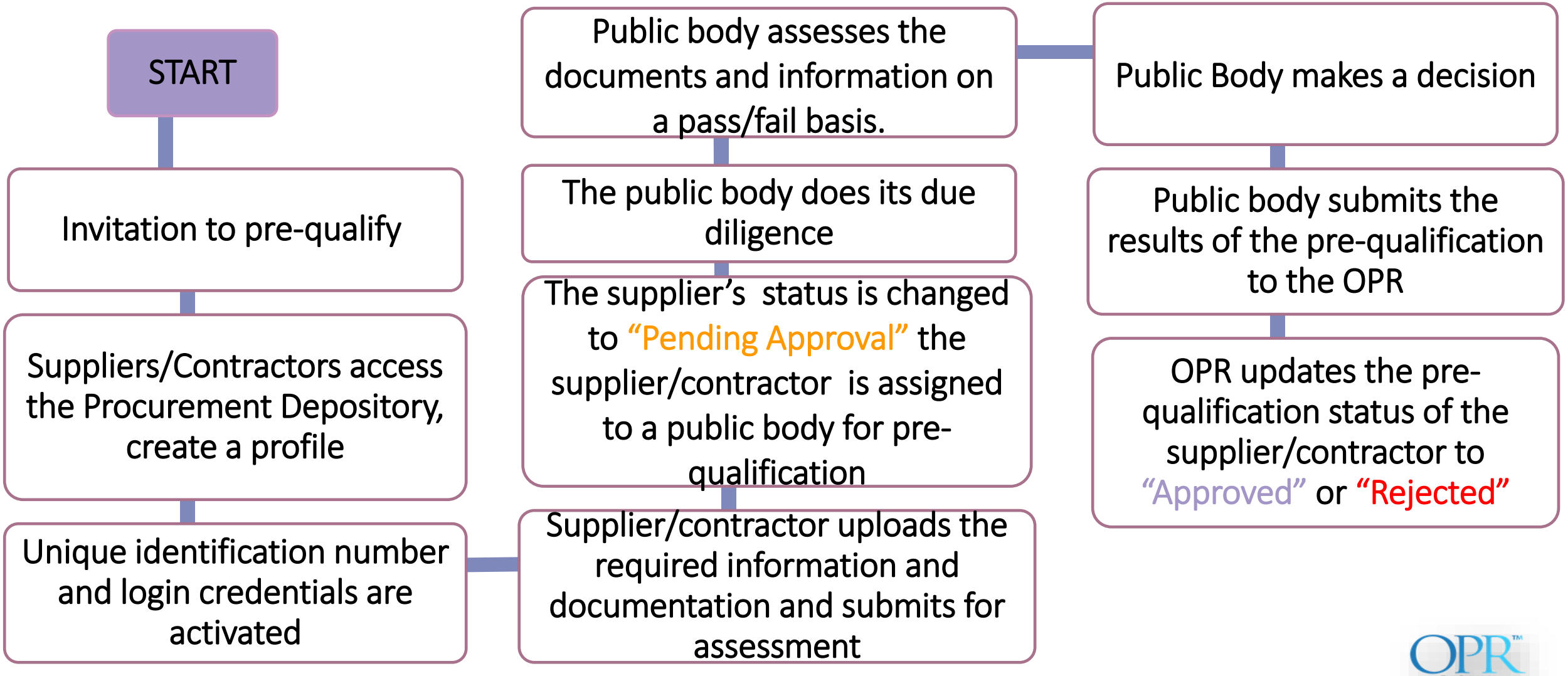
d

Have **fulfilled their obligations to pay all required taxes and contributions** in Trinidad and Tobago

e

Have the necessary **professional** and **technical qualifications and competence**, **financial resources, equipment and other physical facilities**, **managerial capability, reliability, experience and personnel** to perform the procurement contract; and **meet relevant industry standards**.

THE PRE-QUALIFICATION PROCESS



ANNUAL PROCUREMENT PLAN

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- The Annual Procurement Plan (the Plan) is prepared by the 'named' Procurement Officer, approved by the Accounting Officer, and subsequently transmitted to the Office for its review and noting, within six (6) weeks of the approval of the National Budget - Section 27

- An Annual Procurement Plan is NOT a schedule of anticipated procurement actions to be undertaken during a period. However, such a schedule (The Annual Schedule of Procurement Activities) flows from the Annual Procurement Plan and will be attached as an Appendix to the Plan.

- The Annual Procurement Plan presents a strategy through which a public body can manage its procurement-related risks and opportunities in support of the delivery of its organisation mandate and strategy.

- Framing the Annual Procurement Plan involves identifying the linkages between procurement and the public entity's programmatic goals and objectives. It is based on review of the entity's mandate and strategy and an analysis of its procurement portfolio, function and capacity.

ANNUAL SCHEDULE OF PLANNED PROCUREMENT ACTIVITIES

No.	Project Number	Project Name	Brief Description	Proposed date for Issue of Bidding Documents	Expected Delivery / Completion Date	Estimated Project Duration (for works and services)	Procurement Method	Standstill period (if applicable) – No. of days	Contract Type
1.	IFB# 003/2018/19	Supply and Delivery of Vehicles	Supply and Delivery of fourteen (14) high-top panel vans, six (6) wreckers and eight (8) 4x4 pick-up vans	Nov-19	Sep-20		National Competitive Bidding	10	3-year full service lease

SOLICITATION OF TENDERS

SOLICITATION OF TENDERS

What is Solicitation?

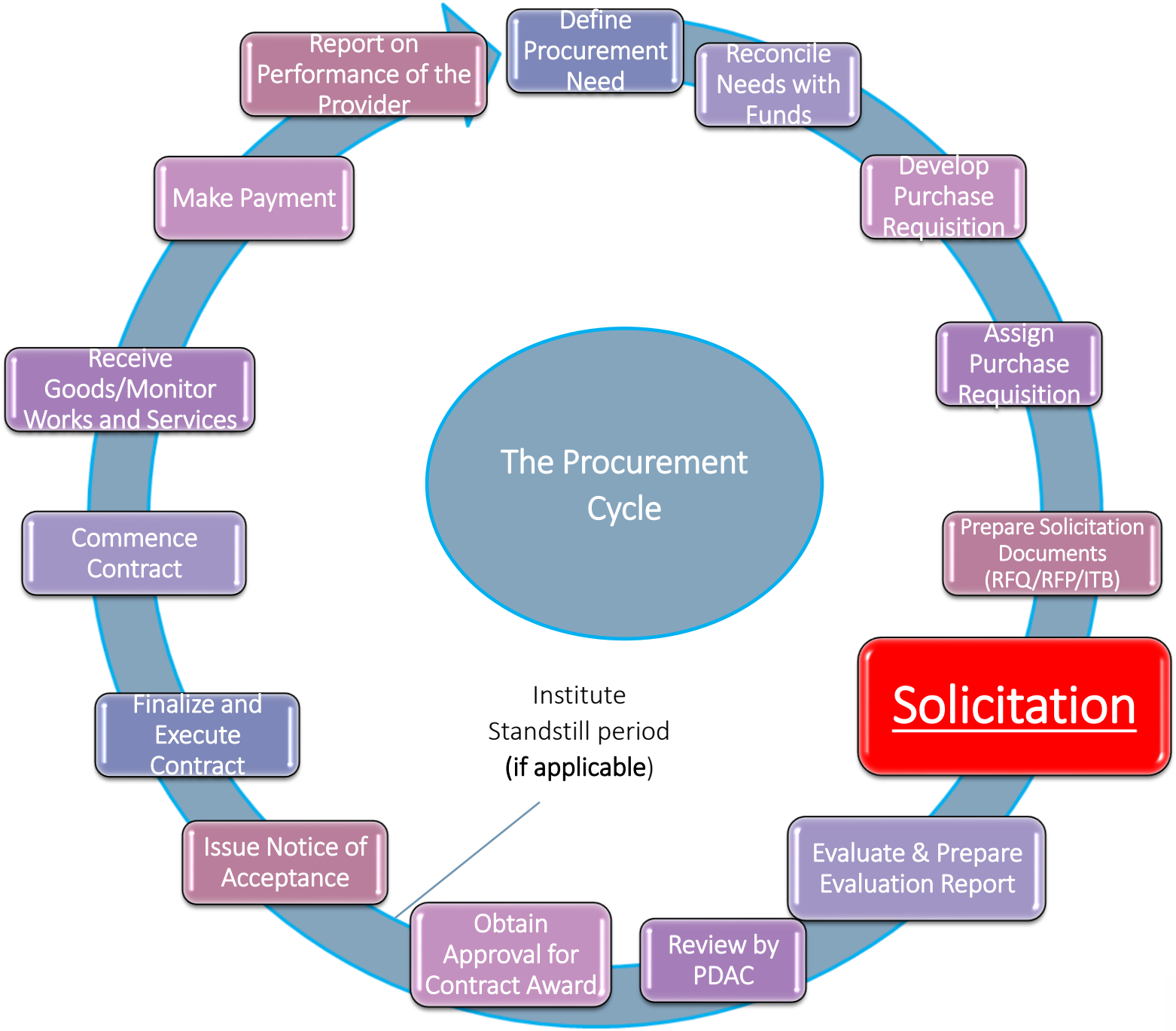
Solicitation means an invitation to tender, presents submissions or participate in request for proposals proceedings or an electronic reverse auction – **Section 4**

What is a Solicitation Document?

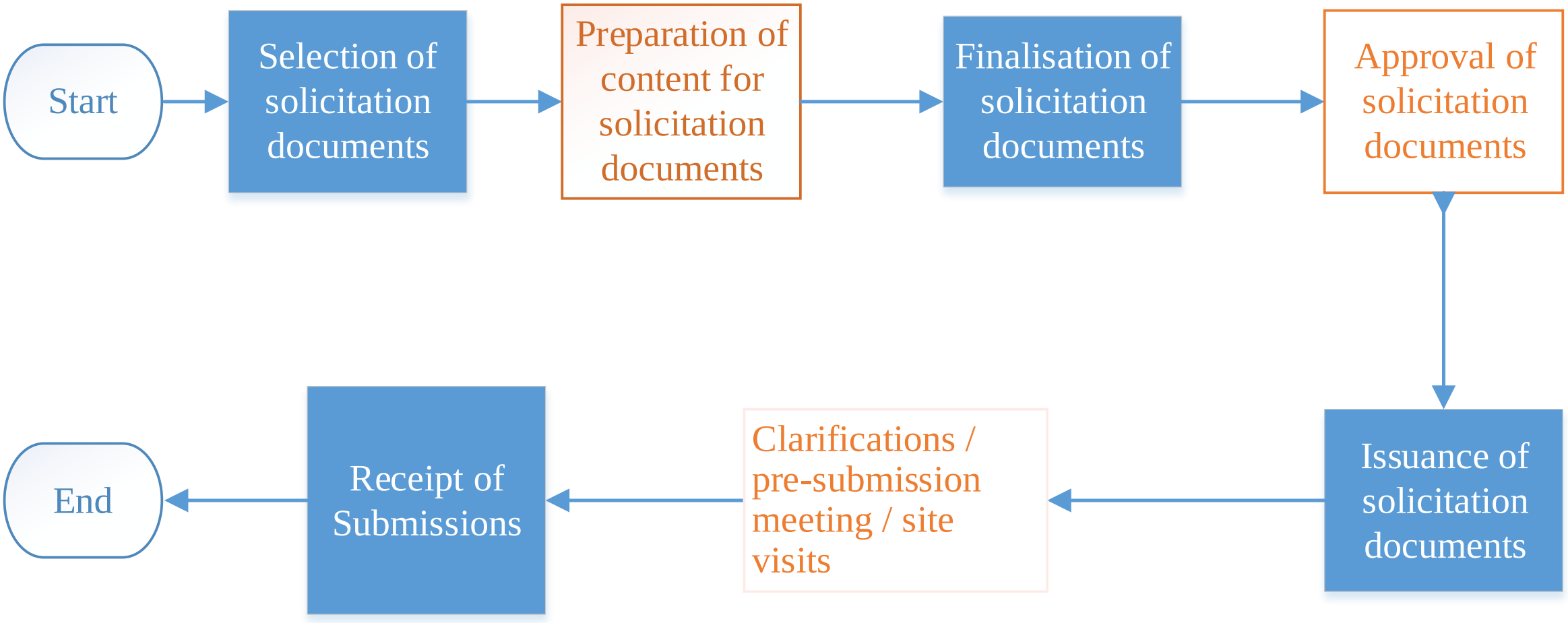
Solicitation document means a document issued by, or on behalf of a procuring entity, including any amendments thereto that sets out the terms and conditions of the procurement – **Section 4**

THE PROCUREMENT CYCLE

Procurement of goods, works & services



STEPS IN THE SOLICITATION PROCESS



CONTRACT MANAGEMENT

PURPOSE OF CONTRACT MANAGEMENT

Contract Management ensures that all parties to a contract fully meet their respective obligations through monitoring and documenting performance

It protects the parties and ensures that the required performance standards are met. It is a mechanism to identify problems and establish solutions in a collaborative manner

Contract monitoring allows for control over variations and dispute resolution

KEY POINTS TO NOTE IN CONTRACT MANAGEMENT

Develop a Contract Management Plan to be agreed upon by both parties

Delegate a Contract Manager preferably a subject matter expert

KPIs are important to measure performance, they should be fit for purpose and easy to support by evidence and reported on a periodic basis.

Supplier/Contractor performance appraisal is to be done throughout the contract management process

Maintain a contract management file with all relevant documents

TYPICAL IMPLEMENTATION PLAN

TYPICAL IMPLEMENTATION PLAN

REFERENCES

1. Exchequer & Audit Act No. 20 of 1959 (as amended)
2. Public Procurement & Disposal of Public Property Act No. 1 of 2015
3. Public Procurement & Disposal of Public Property Act No. 5 of 2016
4. Website: https://www.wto.org/english/tratop_e/gproc_e/gproc_e.htm

Thank You